

37 Am. Jur. 2d Fraud and Deceit § 83

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Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

IV. False Representations

B. Necessity that Representation Be of Fact; Opinions

4. Commendatory Trade Talk; Promotion and “Puffery”

§ 83. Applications of rule and exceptions—Statements in advertisements, catalogs, circulars, etc

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#)  11

A.L.R. Library

[Products Liability: Statements in Advertisements as Affecting Liability of Manufacturers or Sellers for Injury Caused by Product Other than Tobacco, 93 A.L.R.5th 103](#)

[Actionable nature of advertising impugning quality or worth of merchandise or products, 42 A.L.R.4th 318 \(secs. 3-9 superseded in part by Defamation of Manufacturer, Regarding Product, Other than Through Statement Charging Breach or Nonperformance of Contract, 104 A.L.R.5th 523\)](#)

[What constitutes “false advertising” of food products or cosmetics within secs. 5 and 12 of the Federal Trade Commission Act \(15 U.S.C.A. secs. 45, 52\), 50 A.L.R. Fed. 16](#)

Trial Strategy

[Liability for Airing False or Misleading Television Infomercials, 37 Am. Jur. Proof of Facts 3d 259](#)

[Sports Memorabilia Dealer's Liability to Collector, 33 Am. Jur. Proof of Facts 3d 359](#)

Statements or claims in newspaper advertisements, catalogs, circulars, etc., by a seller, may give rise to actions for fraud or misrepresentation.¹ An advertisement may be fraudulent although every sentence in it, separately considered, is literally true,

if things are omitted that should have been said, or if it is composed or purposefully printed in such a way as to mislead.² That exceptionally acute and sophisticated readers may be able by penetrating analysis to decipher the true nature of an advertisement does not necessarily mean that the advertisement is not fraudulent, but rather, the question of fraud should be determined in the light of the effect the advertisement would most probably produce on ordinary minds.³ However, the rule by which the seller of goods is bound for false representations as to the nature thereof, contained in circulars or advertisements displayed to the public at and prior to the time of sale, which may be presumed to have become a part of the inducement of the contract, is limited to representations of fact and does not include mere statements of opinion as to the nature or quality of the property.⁴ Representations or statements made in advertisements or circulars by one having goods to sell, as to their quality or worth, may be mere nonactionable “dealer’s talk” or “puffing,”⁵ and the same possibility applies with respects to statements in a company’s press release.⁶

The rule requiring reliance upon a misrepresentation in order to recover for fraud⁷ is fully applicable where a seller’s representations appear in an advertisement.⁸

CUMULATIVE SUPPLEMENT

Cases:

Automobile manufacturer’s representation in advertising materials that its trucks met federal nitrogen oxide emissions standards was not mere puffery, since emissions standards were quantifiable and specific, and thus such representation, if false, could support buyers’ civil claims under Racketeer Influenced and Corrupt Organizations Act. 18 U.S.C.A. § 1962. *Bledsoe v. FCA US LLC*, 378 F. Supp. 3d 626 (E.D. Mich. 2019).

[END OF SUPPLEMENT]

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Footnotes

¹ *Economy Hog & Cattle Powder Co. v. Compton*, 192 Ind. 222, 135 N.E. 1 (1922); *Chesus v. Watts*, 967 S.W.2d 97 (Mo. Ct. App. W.D. 1998); *Stad v. Grace Downs Model and Air Career School*, 65 Misc. 2d 1095, 319 N.Y.S.2d 918 (N.Y. Civ. Ct. 1971).

² *Donaldson v. Read Magazine*, 333 U.S. 178, 68 S. Ct. 591, 92 L. Ed. 628 (1948).

³ *Donaldson v. Read Magazine*, 333 U.S. 178, 68 S. Ct. 591, 92 L. Ed. 628 (1948).

⁴ *Alpine v. Friend Bros.*, 244 Mass. 164, 138 N.E. 553 (1923); *Ralston Purina Co. v. Iiams*, 143 Neb. 588, 10 N.W.2d 452 (1943).

⁵ *Glen Holly Entertainment, Inc. v. Tektronix, Inc.*, 100 F. Supp. 2d 1086 (C.D. Cal. 1999) (rejected on other grounds by, *Petersen v. Allstate Indem. Co.*, 281 F.R.D. 413 (C.D. Cal. 2012)) (applying California law); *Minnesota Forest Products, Inc. v. Ligna Machinery, Inc.*, 17 F. Supp. 2d 892, 37 U.C.C. Rep. Serv. 2d 273 (D. Minn. 1998); *Dobbin v. Pacific Coast Coal Co.*, 25 Wash. 2d 190, 170 P.2d 642 (1946).

⁶ *Shroyer v. New Cingular Wireless Services, Inc.*, 622 F.3d 1035 (9th Cir. 2010).

⁷ § 231.

⁸ *Rachlin v. Libby-Owens-Ford Glass Co.*, 96 F.2d 597 (C.C.A. 2d Cir. 1938); *Dobbin v. Pacific Coast Coal Co.*, 25 Wash. 2d 190, 170 P.2d 642 (1946).

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